

JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

Assigned for All Purposes
Judge Melissa R. McCormick
Dept. CX104

Attorneys for Plaintiff JEFFREY SCHULZ
on behalf of the State of California and all Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

JEFFREY SCHULZ, on behalf of the State of
California and all Aggrieved Employees,

Plaintiff,

v.

PATINA RESTAURANT GROUP, LLC, a
Delaware Limited Liability Company;
ANAHEIM NAPLES, LLC, a Delaware
Limited Liability Company; DELAWARE
NORTH COMPANIES, INCORPORATED,
a Delaware Corporation; DELAWARE
NORTH COMPANIES SPORTSERVICE,
INC., a New York Corporation;
DELAWARE NORTH COMPANIES
TRAVEL HOSPITALITY SERVICES,
INC, a Delaware Corporation; DELAWARE
NORTH COMPANIES PARKS &
RESORTS, INC., a Delaware Corporation;
and DOES 1-100, inclusive,

Defendants.

Case No.: 30-2024-01402568-CU-OE-CXC

**PLAINTIFF’S REPRESENTATIVE
COMPLAINT FOR VIOLATION OF
THE PRIVATE ATTORNEYS
GENERAL ACT, CAL. LABOR CODE
SECTIONS 2698, et seq.**

1 Plaintiff, JEFFREY SCHULZ, (“PLAINTIFF”), on behalf of the State of California and all
2 Aggrieved Employees (as defined below), hereby files this Complaint against Defendants PATINA
3 RESTAURANT GROUP, LLC, a Delaware Limited Liability Company; ANAHEIM NAPLES,
4 LLC, a Delaware Limited Liability Company; DELAWARE NORTH COMPANIES,
5 INCORPORATED, a Delaware Corporation; DELAWARE NORTH COMPANIES
6 SPORTSERVICE, INC., a New York Corporation; DELAWARE NORTH COMPANIES
7 TRAVEL HOSPITALITY SERVICES, INC, a Delaware Corporation; DELAWARE NORTH
8 COMPANIES PARKS & RESORTS, INC., a Delaware Corporation; and DOES 1-100, inclusive,
9 (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed and believes and
10 thereon alleges as follows:

11 **INTRODUCTION**

12 1. This is a representative action filed by PLAINTIFF on behalf of PLAINTIFF, all
13 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California’s
14 Private Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties
15 (75% payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
16 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

17 **JURISDICTION AND VENUE**

18 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
19 California statutes, including but not limited to the PAGA, and decisional law and regulations.

20 3. Venue is proper in this judicial district and the County of Orange pursuant to
21 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
22 this judicial district and conduct alleged by PLAINTIFF herein occurred in this this judicial district.
23 *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue
24 in a PAGA action is proper in any county where the defendants committed Labor Code violations
25 against some of its employees). Venue is also proper pursuant to section 393 of the California Code
26 of Civil Procedure because the cause, or some part of the cause, arose in the County of Orange.

27 **THE PARTIES**

28 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
2
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 California and a citizen of the State of California.

2 5. PLAINTIFF was continuously employed by DEFENDANTS from in or around 2021
3 through on or around August 1, 2023. PLAINTIFF worked for DEFENDANTS as a prep cook
4 and/or similar job title(s) and/or job position(s) from in or around 2021 through in or around
5 December 2022 and from in or around May 2023 through on or around August 1, 2023.
6 DEFENDANTS assigned PLAINTIFF to work out of DEFENDANTS's location, facilities,
7 restaurant and/or venue operating under the name Napolina Pizzeria and located in Downtown
8 Disney Anaheim, California.

9 6. Defendant PATINA RESTAURANT GROUP, LLC is a Delaware Limited Liability
10 Company that, at all relevant times, was authorized to do business within the State of California and
11 is doing business in the State of California.

12 7. Defendant ANAHEIM NAPLES, LLC is a Delaware Limited Liability Company
13 that, at all relevant times, was authorized to do business within the State of California and is doing
14 business in the State of California.

15 8. Defendant DELAWARE NORTH COMPANIES, INCORPORATED is a Delaware
16 Corporation that, at all relevant times, was authorized to do business within the State of California
17 and is doing business in the State of California.

18 9. Defendant DELAWARE NORTH COMPANIES SPORTSERVICE, INC. is a New
19 York Corporation that, at all relevant times, was authorized to do business within the State of
20 California and is doing business in the State of California.

21 10. Defendant DELAWARE NORTH COMPANIES TRAVEL HOSPITALITY
22 SERVICES, INC is a Delaware Corporation that, at all relevant times, was authorized to do business
23 within the State of California and is doing business in the State of California.

24 11. Defendant DELAWARE NORTH COMPANIES PARKS & RESORTS, INC. is a
25 Delaware Corporation that, at all relevant times, was authorized to do business within the State of
26 California and is doing business in the State of California.

27 12. DEFENDANTS own, operate, manage and/or staff its employees at a hospitality
28 business. As part of its business operations, DEFENDANTS own, operate and/or otherwise manage

1 multiple restaurants, cafes, bars, entertainment venues and/or other hospitality venues in California,
2 including but not limited to, at least the following locations in California operating under the
3 following names and situated in the following California locations: Taqueria at Tortilla Jo's in
4 Downtown Disney Anaheim; Tortilla Jo's in Downtown Disney Anaheim; Tangata Restaurant at
5 the Bowers Museum in Santa Ana, California; Leatherby's Cafe Rouge at Segerstrom Center for
6 the Arts in Costa Mesa, Orange County; George's Café and/or George's Cafe Outdoor Patio located
7 at the Orange County's cultural epicenter, Segerstrom Center for the Arts; Napolini Pizzeria in
8 Downtown Disney Anaheim; Tortilla Jo's is a Mexican restaurant and tequila bar in Downtown
9 Disney Anaheim; Naples Ristorante Bar Is An Italian Restaurant And Bar In Downtown Disney,
10 Anaheim; Norton Simon Café; The Kitchen At Descanso Gardens; Ray's And Stark Bar At
11 LACMA; C+M (Coffee And Milk) At LACMA; and Nick + Stef's Steakhouse Is A Fine Dining
12 Restaurant In Downtown Los Angeles. DEFENDANTS, through its various locations, serve the
13 hospitality industry.

14 13. The true names and capacities of the DOE Defendants sued herein as DOES 1
15 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
16 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
17 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
18 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
19 become known.

20 14. PLAINTIFF is further informed and believes that, at all relevant times, each
21 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
22 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
23 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
24 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
25 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
26 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
27 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
28 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,

1 controlled, aided and abetted the conduct of all other Defendants.

2 **JOINT LIABILITY**

3 15. Under California law, the definition of the terms “to employ” are broadly construed
4 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
5 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
6 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
7 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
8 was to reach situations in which multiple entities control different aspects of the employment
9 relationship. Supervision of the work, in the specific sense of exercising control over how services
10 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
11 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
12 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
13 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
14 California, applying a less stringent standard to what constitutes sufficient control by a business
15 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
16 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
17 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
18 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
19 employment,” *Id.* at 875 [emphasis added].

20 16. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and other
21 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
22 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
23 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
24 over wages, hours and working conditions of PLAINTIFF and Aggrieved Employees; (2) suffered
25 or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF
26 and Aggrieved Employees to work for them.

27 17. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
28 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized

1 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
2 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
3 policies and practices regardless of the location(s) where they worked. Among other things,
4 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
5 in DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control
6 over the day-to-day operations and employment matters, including the power to hire and fire, set
7 schedules, issue employee policies, and determine rates of compensation across its locations in
8 California; (3) DEFENDANTS utilize the same policies and procedures for all California
9 employees, including issuing the same employee handbooks and other form agreements; (4)
10 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
11 employment matters; and, (6) DEFENDANTS share employees.

12 18. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
13 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
14 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
15 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
16 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
17 considered the joint employers of PLAINTIFF and Aggrieved Employees.

18 19. For example, various documents contained in PLAINTIFF's personnel file,
19 including but not limited to, hiring documents and/or wage statements identify "Anaheim Naples,
20 LLC" and/or "Patina Restaurant, LLC" and/or "Patina Restaurant Group" and/or "Patina" as the
21 legal name of PLAINTIFF's employer. However, based on information and belief, other documents
22 contained in PLAINTIFF's personnel file, including without limitation, employee attendance
23 policies, purported authorizations and/or disclosures to perform background check(s) among other
24 employment-related documents and/or employment policies, agreements and/or authorizations all
25 identify "Delaware North Companies, Incorporated" and/or "Delaware North Companies."
26 Moreover, based on information and belief, DEFENDANTS, and each of them, maintains the same
27 agent for service of process and/or principal business address as provided to the California Secretary
28 of State and/or entity headquarters and/or use some of the same attorneys and/or human resources

1 personnel to oversee employment-related matters.

2 20. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
3 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
4 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
5 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
6 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
7 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively
8 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of
9 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
10 and other Aggrieved Employees' employment with or without cause. Upon information and belief,
11 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
12 writing the details of their compensation, and the manner in which they were to take meal and rest
13 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
14 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
15 collectively would evaluate their wage rates.

16 21. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
17 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
18 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
19 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
20 PLAINTIFF seeks relief in this Complaint.

21 22. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
22 control over, applied the same policies and practices, and engaged in the same acts and omissions
23 with regard to the other Aggrieved Employees.

24 23. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS must
25 be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under
26 PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform
27 services from which they benefited, and furthermore that the aforementioned entities had the right
28 to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant

1 times herein, so as to be considered the joint employers of PLAINTIFF.

2 24. By reason of their status as joint employers of PLAINTIFF and Aggrieved
3 Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor
4 Code and applicable Wage Orders as to all Aggrieved Employees.

5 **PAGA ALLEGATIONS**

6 25. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
7 of the State of California and all Aggrieved Employees, regarding violations of the California Labor
8 Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

9 All current and former non-exempt employees that worked either
10 directly or via a staffing agency for any one or more of the
11 DEFENDANTS at any location in California at any time from one
12 year plus 65 days from the filing of the initial Complaint through the
13 present (“PAGA Period”).

14 26. The Aggrieved Employees worked at DEFENDANTS restaurants, facilities and/or
15 other locations including but not limited to DEFENDANTS’ restaurants, facilities and/or other
16 locations operating under including but not limited to the following names: Taqueria at Tortilla Jo's
17 in Downtown Disney Anaheim; Tortilla Jo’s in Downtown Disney Anaheim; Tangata Restaurant at
18 the Bowers Museum in Santa Ana, California; Leatherby’s Cafe Rouge at Segerstrom Center for
19 the Arts in Costa Mesa, Orange County; George’s Café and/or George's Cafe Outdoor Patio located
20 at the Orange County's cultural epicenter, Segerstrom Center for the Arts; Napolini Pizzeria in
21 Downtown Disney Anaheim; Tortilla Jo's is a Mexican restaurant and tequila bar in Downtown
22 Disney Anaheim; Naples Ristorante Bar Is An Italian Restaurant And Bar In Downtown Disney,
23 Anaheim; Norton Simon Café; The Kitchen At Descanso Gardens; Ray's And Stark Bar At
24 LACMA; C+M (Coffee And Milk) At LACMA; and Nick + Stef's Steakhouse Is A Fine Dining
25 Restaurant In Downtown Los Angeles.

26 27. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
27 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
28 limitations period and suffered one or more of the Labor Code violations set forth herein.

1 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved
2 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
3 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
4 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
5 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
6 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
7 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
8 *Id.* at 760-761.

9 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

10 28. PLAINTIFF, on February 13, 2024, through counsel, gave written notice by online
11 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
12 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
13 in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via
14 certified mail.

15 29. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
16 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
17 Employees.

18 30. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
19 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
20 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
21 PLAINTIFF has exhausted the administrative remedies as required by Labor Code section 2699.3.
22 Consequently, PLAINTIFF’s right to file the instant lawsuit has duly accrued.

23 31. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
24 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
25 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

26 **FACTUAL ALLEGATIONS**

27 32. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
28 worked for DEFENDANTS in the State of California. At all times referenced herein,

1 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
2 permitted them to work.

3 33. PLAINTIFF was continuously employed by DEFENDANTS from in or around 2021
4 through on or around August 1, 2023. PLAINTIFF worked for DEFENDANTS as a prep cook
5 and/or similar job title(s) and/or job position(s) from in or around 2021 through in or around
6 December 2022 and from in or around May 2023 through on or around August 1, 2023.
7 DEFENDANTS assigned PLAINTIFF to work out of DEFENDANTS's location, facilities,
8 restaurant and/or venue operating under the name Napolina Pizzeria and located in Downtown
9 Disney Anaheim, California. PLAINTIFF regularly worked at least approximately eight (8) to nine
10 (9) hours per day, at least five (5) days per week.

11 34. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
12 hourly basis for time counted by DEFENDANTS as hours worked.

13 35. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
14 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
15 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
16 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
17 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
18 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
19 below.

20 36. Based on information and belief, DEFENDANTS implemented a policy and/or
21 practice of rounding meal period start and end times and/or automatically deducting at least thirty
22 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
23 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
24 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
25 PLAINTIFF and Aggrieved Employees of all wages owed.

26 37. Based on information and belief, Aggrieved Employees were not paid for all hours
27 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
28 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-

1 the clock work policies and/or practices.

2 38. For example, based on information and belief, DEFENDANTS required Aggrieved
3 Employees to be at their assigned workstations at the start of a scheduled shift, thereby forcing
4 Aggrieved Employees to gather work-related equipment and/or safety gear, make any necessary
5 adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work
6 clothing/uniforms and/or protective equipment, and/or complete other work tasks prior to their
7 scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock
8 work.

9 39. Based on information and belief, Aggrieved Employees were required to complete
10 other off-the-clock work tasks after clocking out for the end of their shifts and/or during
11 uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum
12 and overtime wages owed to Aggrieved Employees. For example, based on information and belief,
13 DEFENDANTS required Aggrieved Employees to clock out for the end of their shifts but to
14 continue working due to the need to return/maintain tools, clean and/or organize their work
15 stations/areas, provide shift status updates and/or debriefings and/or participate in work meetings,
16 respond to work-related communications and/or perform other work tasks off-the-clock, resulting
17 in the underpayment of minimum wages and overtime wages owed to Aggrieved Employees.

18 40. Based on information and belief, at times, Aggrieved Employees were required to
19 complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or
20 messages they received to their phones/mobile devices and were required to respond to, including
21 but not limited to, communications from supervisors regarding scheduling and/or other work tasks,
22 resulting in the underpayment of wages owed to Aggrieved Employees.

23 41. Based on information and belief, DEFENDANTS did not compensate Aggrieved
24 Employees for time spent donning and doffing personal protective equipment and/or uniforms (e.g.,
25 rubber gloves, hairnets, aprons, hats, and/or face masks) during meal periods, before the start of a
26 scheduled shift, and/or after completing a scheduled shift, resulting in the underpayment of wages
27 owed to Aggrieved Employees.

28 42. Based on information and belief, DEFENDANTS required Aggrieved Employees to

1 undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their
2 scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

3 43. Additionally, PLAINTIFF and other Aggrieved Employees were required to perform
4 other off-the-clock work for which they were not compensated.

5 44. For example, based on information and belief, at times, DEFENDANTS'
6 biometric/electronic employee time-keeping system malfunctioned such that Aggrieved Employees
7 were required to either reinitiate and/or otherwise troubleshoot the system prior to being able to
8 clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from
9 meal periods, resulting in off-the-clock work and the underpayment of wages owed to Aggrieved
10 Employees. Based on information and belief, Aggrieved Employees experienced the same issues
11 when clocking out for shifts and/or back in for meal periods. This time spent under DEFENDANTS'
12 control was not recorded and not compensated and resulted in unpaid minimum wages owed to
13 Aggrieved Employees.

14 45. Moreover, based on information and belief, Aggrieved Employees who opened their
15 work locations were required to first unlock the doors, turn on all the lights in the restaurant/facility
16 and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work
17 and the underpayment of wages owed to Aggrieved Employees. Based on further information and
18 belief, Aggrieved Employees in charge of closing their location(s) were required to first clock out
19 for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the
20 doors. This resulted in additional off-the-clock post-shift work that was not compensated and the
21 underpayment of wages owed to Aggrieved Employees.

22 46. Based on information and belief, at times, DEFENDANTS require/required
23 Aggrieved Employees to travel between DEFENDANTS' restaurants, facilities and/or locations
24 without compensating Aggrieved Employees for the travel time.

25 47. For example, based on information and belief, due to scheduling issues and/or
26 understaffing, Aggrieved Employees were at times required after working at their scheduled facility
27 location to cover a shift at another of DEFENDANTS' restaurants/facilities/locations but were not
28 compensated for the time spent driving to the second restaurant/facility, resulting in the

1 underpayment of minimum and overtime wages owed to Aggrieved Employees.

2 48. Based on information and belief, DEFENDANTS failed to compensate Aggrieved
3 Employees for all time spent completing DEFENDANTS' required trainings and/or courses (e.g.,
4 food safety and/or food handler courses) and/or testings and/or certifications (e.g., food handler
5 certifications).

6 49. Based on information and belief, DEFENDANTS failed to pay Aggrieved
7 Employees the applicable minimum wage for the county and/or city within which the Aggrieved
8 Employee worked in California.

9 50. Moreover, based on information and belief, DEFENDANTS failed to pay
10 PLAINTIFF and/or other Aggrieved Employees split shift premium wages when they worked split
11 shifts during the relevant period.

12 51. For example, based on information and belief, at times, DEFENDANTS required
13 PLAINTIFF and/or other Aggrieved Employees to work two separate shifts in the same day. Based
14 on information and belief, DEFENDANTS failed to pay PLAINTIFF and/or other Aggrieved
15 Employees split shift compensation whenever PLAINTIFF's and/or other Aggrieved Employees'
16 work schedules were interrupted by non-paid non-working periods established by DEFENDANTS,
17 which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage
18 orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be
19 paid in addition to the minimum wage for that workday...). See, also, Cal. Code Regs. Tit. 8, §
20 11050 (when an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid
21 in addition to the minimum wage for that workday, except when the employee resides at the place
22 of employment). DEFENDANTS also failed to separately itemize these split shift premium wages
23 on PLAINTIFF's and/or other Aggrieved Employees' wage statements, in violation of Labor Code
24 sections 510, 1194 and all applicable IWC Wage Orders. See,
25 https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on
26 the pay stub provided to the employee, and it should be shown as a separate category such as "Split
27 Shift Premium" and should not be lumped into another category such as wages, bonus, etc.
28 DEFENDANTS failed to separately account for the split shift premiums earned by PLAINTIFF

1 and/or other Aggrieved Employees on their wage statements.

2 52. Based on information and belief, DEFENDANTS failed to pay Aggrieved
3 Employees for time they were required to spend completing orientation, policy questionnaires,
4 and/or time spent completing the onboarding process including but not limited to reviewing various
5 documents and policies provided by DEFEDANTS. Based on information and belief, this work time
6 was completed off-the-clock and was not compensated.

7 53. Based in information and belief, DEFENDANTS implemented a time-rounding
8 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
9 compensable time because the time-rounding system implemented by DEFENDANTS would
10 almost always, if not always, result in understating actual compensable work time.

11 54. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
12 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
13 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
14 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
15 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
16 forty (40) hours in a week.

17 55. Based on information and belief, DEFENDANTS had actual and/or constructive
18 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
19 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
20 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation
21 of California's minimum and overtime wage laws.

22 56. Based on information and belief, DEFENDANTS failed and continues to fail to pay
23 premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours
24 in a week.

25 57. Based on information and belief, DEFENDANTS failed and continue to fail to pay
26 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
27 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in
28 a work week, in violation of California's overtime laws.

1 58. Based on information and belief, DEFENDANTS calculated the owed overtime
2 rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s)
3 based on the minimum wage established for the cities and/or counties within which Aggrieved
4 Employees worked, resulting in the miscalculation and underpayment of overtime wages owed to
5 Aggrieved Employees who worked in cities and/or counties in California with minimum wage rates
6 above the California minimum wage rate.

7 59. Based on information and belief, DEFENDANTS failed to incorporate all non-
8 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive
9 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
10 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
11 wages owed to PLAINTIFF and other Aggrieved Employees.

12 60. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
13 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
14 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
15 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
16 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
17 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
18 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
19 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
20 completely.

21 61. For example, based on information and belief, Aggrieved Employees from time to
22 time had their meal periods interrupted and/or cut short and/or were forced to work through their
23 meal periods completely due to the need to prep food, assist customers and/or complete other work
24 tasks, resulting in denied meal periods and the underpayment of wages owed to Aggrieved
25 Employees.

26 62. Other times, Aggrieved Employees were forced to take their meal periods late (i.e.
27 after the fifth hour of work) due to need to prep food, assist customers and/or complete other work
28 tasks.

1 63. Based on information and belief, DEFENDANTS did not pay Aggrieved Employees
2 a meal period premium for each missed and/or otherwise legally noncompliant meal period. For
3 example, based on information and belief, PLAINTIFF was at times required to take a shortened,
4 interrupted and/or late meal period (after working more than five (5) hours) due to the need to
5 complete assigned job duties.

6 64. Based on information and belief, other Aggrieved Employees were consistently
7 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
8 interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing,
9 the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and
10 expectations.

11 65. Based on information and belief, DEFENDANTS implemented policies and/or
12 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
13 during unpaid meal periods.

14 66. Based on information and belief, DEFENDANTS required Aggrieved Employees to
15 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
16 into account when scheduling meal periods for Aggrieved Employees. Based on information and
17 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

18 67. Based on information and belief, despite DEFENDANTS' failure to provide lawful
19 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
20 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
21 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
22 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
23 Employees did not receive lawful meal periods.

24 68. Moreover, based on information and belief, Aggrieved Employees who worked shifts
25 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

26 69. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
27 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
28 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor

1 did DEFENDANTS have any sort of compliant policy in practice.

2 70. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
3 records of the true start and end times of PLAINTIFF's and Aggrieved Employees' meal periods.
4 Based on information and belief, to the extent meal periods were recorded, DEFENDANTS illegally
5 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other
6 Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal
7 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

8 71. Based on information and belief, DEFENDANTS had actual and/or constructive
9 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
10 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
11 violation of California's meal period laws.

12 72. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
13 additional hour of wages at their respective regular rates of compensation for each workday a lawful
14 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
15 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
16 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
17 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
18 compensation for purposes of calculating the owed meal period premium.

19 73. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
20 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
21 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
22 middle of the work period, as required by law.

23 74. PLAINTIFF and other Aggrieved Employees were not adequately informed,
24 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
25 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
26 the taking or timing of duty-free rest periods.

27 75. Based on information and belief, DEFENDANTS did not have a have a compliant
28 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in

1 practice.

2 76. For example, based on information and belief, Aggrieved Employees were at times
3 forced to cut their rest periods short, take interrupted rest periods and/or work through their owed
4 rest periods completely due to lack of coverage/lack of relief workers, the need to prep food, assist
5 customers and/or complete other work tasks.

6 77. For example, PLAINTIFF was frequently, if not always, required to work through
7 his owed rest periods due to the need to complete assigned job duties.

8 78. Based on information and belief, DEFENDANTS further failed to authorize and
9 permit rest periods that were a “net” ten minutes in a suitable rest area and instead, to the extent any
10 rest periods were provided at all, limited Aggrieved Employees to only ten-minute rest periods,
11 requiring them to be back at their workstations within ten minutes of leaving, in violation of
12 California rest period law.

13 79. Based on information and belief, any purported rest periods were interrupted, cut
14 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of
15 their job duties, and/or commentary from supervisors pressuring them to skip rest periods
16 completely and/or take non-compliant rest periods.

17 80. Moreover, based on information and belief, DEFENDANTS failed to provide any
18 form of a third rest period on shifts lasting longer than ten hours.

19 81. Based on information and belief, DEFENDANTS implemented policies and/or
20 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
21 DEFENDANTS' control during rest periods.

22 82. Based on information and belief, Aggrieved Employees were pressured to complete
23 their work duties according to a designated schedule such that rest periods were only taken once
24 tasks were completed, and/or as time permitted.

25 83. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
26 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
27 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
28 workday a proper rest period was not provided and/or failed to pay the proper rest period premium

1 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
2 shift differential pay, and/or other non-discretionary compensation into the regular rate of
3 compensation for purposes of calculating the owed rest period premium.

4 84. **Failure to Provide Suitable Resting Facilities.** Per section 13 of all applicable IWC
5 Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the
6 Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the
7 toilet rooms and shall be available to employees during work hours.”

8 85. DEFENDANTS’ locations/facilities are generally similar in layout and design, and
9 there was, and continues to be, space that allows for a resting facility that employees may use to
10 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
11 Employees with a resting facility within DEFENDANTS’ facilities/locations with reasonable or no
12 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
13 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to
14 resting, including but not limited to leaning up against the wall, or search for facilities outside of
15 DEFENDANTS’ premises which are not designated or reserved for their rest, such as their personal
16 vehicles.

17 86. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities
18 during their hours of work, particularly during meal and/or rest periods.

19 87. DEFENDANTS’ failure to provide suitable resting facilities to Aggrieved
20 Employees violated and continue to violate the applicable Wage Order, section 13(B) and the
21 California Labor Code, including but not limited to section 1198.

22 88. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
23 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
24 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
25 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
26 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
27 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
28 applicable hourly rates in effect during the pay period and the corresponding number of hours

1 worked at each hourly rate by the employee.

2 89. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
3 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
4 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
5 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
6 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
7 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
8 other off-the-clock work policies and practices described above) which results in a violation of
9 Labor Code section 226(a).

10 90. Separately, and independent of the above allegations, based on information and
11 belief, DEFENDANTS issued wage statements to Aggrieved Employees that failed to list the total
12 hours worked, in violation of including but not limited to, Labor Code section 226(a)(2).

13 91. Based on information and belief, wage statements issued by DEFENDANTS failed
14 to list all applicable hourly rates in effect during the pay period and the corresponding number of
15 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
16 Code section 226(a)(9).

17 92. For example, based on information and belief, wage statements issued by
18 DEFENDANTS failed to list all applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the employee, in violation of Labor
20 Code section 226(a)(9) due to DEFENDANTS' failure to list an overtime rate category at all and/or
21 failure to list a category containing the proper overtime rate.

22 93. Moreover, based on information and belief, DEFENDANTS issued wage statements
23 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
24 other things, failing to list the correct name and/or address of the legal entity that is the employer,
25 in violation of Labor Code section 226(a)(8).

26 94. Based on information and belief, wage statements issued by DEFENDANTS failed
27 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid.

28 95. For example, based on information and belief, wage statements issued by

1 DEFENDANTS failed to list the inclusive dates of the pay period for which the Aggrieved
2 Employee is being paid. For example, based on information and belief, at times, DEFENDANTS'
3 issued wage statements to Aggrieved Employees containing payment for hours worked during
4 previous pay periods, yet DEFENDANTS' wage statements do not include the inclusive dates of
5 the accurate pay period for that retroactive pay, further failing to list the total hours worked for the
6 pay period, including but not limited to, the total hours worked for the pay period the retroactive
7 pay corresponds with, in violation of including but not limited to, Labor Code Sections 226(a)(2)
8 and/or 226(a)(6).

9 96. As such, DEFENDANTS' issued wage statements to Aggrieved Employees that did
10 not include all of the statutorily required information, including but not limited to, the correct name
11 and/or address of the legal entity that is the employer.

12 97. Based on further information and belief, DEFENDANTS issued wage statements to
13 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential
14 wages were paid in violation of Labor Code section 226.

15 98. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved
16 Employees that were not accurate and did not include all of the statutorily required information. As
17 such, DEFENDANTS violated Labor Code section 226.

18 99. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
19 "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
20 to said employee." Based on information and belief DEFENDANTS made unlawful deductions
21 from Aggrieved Employees paychecks during the relevant period including but not limited to, from
22 paychecks of employees correctly classified as exempt, during the relevant period, including but not
23 limited to deducting costs of uniforms and/or other business costs and/or deducting wages for
24 purported overpayments from previous pay periods and/or unlawfully deducting wages for
25 negligently damaged property and/or deducting costs advanced by DEFENDANTS from Aggrieved
26 Employees' final paychecks. Such a practice is in violation of including but not limited to, Labor
27 Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section
28 2699.

1 100. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
2 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
3 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
4 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
5 required by law, including but not limited to the following records: total daily hours worked,
6 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
7 began and ended each work period, time records of meal periods, and accurate itemized wage
8 statements.

9 101. DEFENDANTS have failed and continue to fail to keep accurate and complete
10 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
11 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
12 employer control during unpaid meal periods, failure to record the true start and end times of meal
13 periods, shift start times and shift end times, and other off-the-clock work policies and practices
14 described herein.

15 102. **Unreimbursed Business Expenses.** Based on information and belief,
16 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
17 as a direct consequence of the performance of their job duties without providing reimbursement, in
18 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
19 Aggrieved Employees were improperly required to provide and maintain work tools that are
20 supposed to be the responsibility of the employer.

21 103. Based on information and belief, DEFENDANTS shifted the costs of doing business
22 onto Aggrieved Employees by requiring them to pay for business expenses, including but not limited
23 to, uniforms/work clothing/work shoes, personal protective/safety gear and/or the use of Aggrieved
24 Employees' personal mobile phone and data usage for work related purposes including but not
25 limited to receiving and responding to work related messages and/or phone calls.

26 104. For example, on information and belief, Aggrieved Employees received
27 calls/messages to their personal cell phones/mobile devices from supervisors and/or other
28 Aggrieved Employees regarding scheduling and/or other work tasks but were not provided any

1 and/or full reimbursement from DEFENDANTS for this personal cell phone use.

2 105. For example, PLAINTIFF was frequently required to use his cell phone/mobile
3 device for work-related purposes, including but not limited to, to make and/or respond to work-
4 related calls and/or messages during his shifts, however, DEFENDANTS did not provide
5 PLAINTIFF with any and/or full reimbursement for the business expenses PLAINTIFF incurred in
6 connection therewith, including but not limited to, reimbursement for increased data plan charges.
7 Based on information and belief, at times, DEFENDANTS required Aggrieved Employees to use
8 their personal vehicles for work without reimbursing them for the personal vehicle expenses they
9 incurred in connection therewith.

10 106. For example, based on information and belief, at times, DEFENDANTS required
11 Aggrieved Employees to travel from one of DEFENDANTS' facilities/restaurants to a second of
12 DEFENDANTS' facilities/restaurants for work without reimbursing Aggrieved Employees for the
13 expenses incurred in connection with DEFENDANTS' business use of their personal vehicles.
14 Based on information and belief, Aggrieved Employees were not reimbursed for the cost of using
15 their personal phone for work related purposes and/or the cost of purchasing and/or maintaining
16 work uniforms/work clothing/work shoes, personal protective/safety gear.

17 107. For example, DEFENDANTS required PLAINTIFF to purchase and/or maintain his
18 own uniforms, work clothing/work shoes, protective equipment / safety gear and/or hand tools,
19 including without limitation, non-slip shoes and/or uniforms, work clothing/work shoes, protective
20 equipment / safety gear and/or hand tools required to carry out PLAINTIFF's assigned job duties,
21 however, DEFENDANTS failed to provide PLAINTIFF with any and/or full reimbursement for the
22 business expenses PLAINTIFF incurred in connection therewith.

23 108. Based on information and belief, DEFENDANTS regularly failed to reimburse and
24 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
25 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
26 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
27 assigned by DEFENDANTS.

28 109. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement

1 for all reasonable expenses associated with carrying out their duties required that Aggrieved
2 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
3 2802.

4 110. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
5 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
6 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
7 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
8 accrued sick leave hours on the correct number of hours worked (as a result of the
9 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
10 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
11 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
12 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
13 compensation into the sick leave pay rate calculation.

14 111. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
15 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
16 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
17 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
18 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
19 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
20 used sick leave and the balance of paid sick leave.

21 112. Based on information and belief, throughout the relevant time period,
22 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
23 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
24 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
25 prior to their respective separations, for as on several occasions thereafter, he or she would have
26 been entitled to use the banked sick leave and earn appropriate compensation.

27 113. Upon information and belief, DEFENDANTS failed and continue to fail to comply
28 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with

1 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
2 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
3 wages.

4 114. As such, DEFENDANTS have violated California's paid sick leave laws and
5 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
6 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
7 unlawful practices and policies violate Labor Code sections 245-248.5.

8 115. **Reporting Time Pay Violations.** Section 5 of all applicable IWC Wage Orders,
9 provides as follows:

10 116. (A) Each workday an employee is required to report for work and does report, but is
11 not put to work or is furnished less than half said employee's usual or scheduled day's work, the
12 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two
13 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less
14 than the minimum wage. (B) If an employee is required to report for work a second time in any one
15 workday and is furnished less than two (2) hours of work on the second reporting said employee
16 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
17 minimum wage.

18 117. Aggrieved Employees were not paid reporting time wages in accordance with
19 California law, including but not limited to the applicable IWC Wage Order. For example, based on
20 information and belief, at times, Aggrieved Employees reported to work for a scheduled shift but
21 were sent home and/or were not put to work and were not paid all owed reporting time pay wages
22 in accordance with California law.

23 118. Based on information and belief, DEFENDANTS have a policy and practice of
24 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
25 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS' failure to
26 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
27 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

28 119. **Seating Violations.** Per section 14(A-B) of all applicable IWC Wage Orders,

1 employees shall be provided with suitable seats when the nature of the work reasonably permits the
2 use of seats and when they are not actively engaged in the work duties that would not permit them
3 to be seated.

4 120. All applicable IWC Wage Orders, Section 14(A-B) provides:

5 (A) All working employees shall be provided with suitable seats when the nature of the
6 work reasonably permits the use of seats.

7 (B) When employees are not engaged in the active duties of their employment and the
8 nature of the work requires standing, an adequate number of suitable seats shall be placed in
9 reasonable proximity to the work area and employees shall be permitted to use such seats when it
10 does not interfere with the performance of their duties.

11 121. Suitable seating is one of the worker protections covered by California's Wage
12 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
13 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
14 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

15 122. Based on information and belief, DEFENDANTS failed to provide Aggrieved
16 Employees with suitable seating, and when such employees were not engaged in duties which
17 required them to stand, no seating was placed in reasonable proximity to their workstations.

18 123. Moreover, based on information and belief, the nature of the work reasonably
19 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
20 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
21 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
22 of seats would not interfere with the performance of their duties.

23 124. **Violation of Labor Code section 351 and 353.** Labor Code Section 351 prohibits
24 employers and their agents from sharing in or keeping any portion of a gratuity left for or given to
25 one or more employees by a patron. Furthermore, it is illegal for employers to make wage deductions
26 from gratuities, or from using gratuities as direct or indirect credits against an employee's
27 wages. Labor Code Section 353 mandates employers to keep accurate records of all gratuities
28 received.

1 125. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
2 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
3 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
4 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
5 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
6 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
7 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
8 Labor Code section 351.

9 126. Based on information and belief, DEFENDANTS charges an additional service
10 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
11 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
12 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
13 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
14 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
15 constitute a gratuity that is intended to the employees providing the service).

16 127. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
17 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
18 they experienced within the statutory period, and \$200 per pay period for each additional violation.

19 128. **Failure to Pay Vested Vacation/Paid Time Off.** Based on information and belief,
20 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
21 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
22 failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation
23 pay/paid time off paid at the final rate including non-discretionary compensation, including but not
24 limited to, shift differentials) to Aggrieved Employees upon separation of employment, in violation
25 of California law, including but not limited to, Labor Code section 227.3.

26 129. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
27 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
28 were due and owing upon termination or resignation. Based on information and belief,

1 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
2 requirements of Labor Code sections 201-202.

3 130. Upon separation of employment, Aggrieved Employees' final paychecks were not
4 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
5 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
6 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
7 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
8 accrued rates.

9 131. For example, DEFENDANTS failed to furnish PLAINTIFF with his final vacation
10 pay until at least approximately five (5) months following the separation of PLAINTIFF's
11 employment. Moreover, PLAINTIFF's final paycheck was devoid of all wages owed, including but
12 not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed
13 sick leave and/or paid time off wages at the properly accrued rates.

14 132. Based on further information and belief, DEFENDANTS failed to timely provide all
15 owed wages immediately upon discharge of employment. Based on information and belief, at times,
16 Aggrieved Employees experienced breaks in employment caused by DEFENDANTS whereby
17 Aggrieved Employees would not be called in for work for longer than a single pay period due to
18 including but not limited to DEFENDANTS' lack of work or lack of assignments. Such instances
19 qualify as a discharge of employment. Yet, DEFENDANTS failed to timely pay all owed wages at
20 the end of such periods of employment, in violation of including but not limited to Labor Code
21 section 201-202.

22 133. **Violation of Labor Code Section 208.** Labor Code Section 208 provides: Every
23 employee who is discharged shall be paid at the place of discharge, and every employee who quits
24 shall be paid at the office or agency of the employer in the county where the employee has been
25 performing labor. All payments shall be made in the manner provided by law.

26 134. Based on information and belief, DEFENDANTS have a policy and practice of
27 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
28 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the

1 office or agency of DEFENDANTS in the county where the work was performed, in violation of
2 Labor Code Section 208.

3 135. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

4 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

5 136. Based on information and belief, DEFENDANTS required Aggrieved Employees to
6 agree in writing to unlawful conditions of employment including but not limited to unlawful
7 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
8 violation of Labor Code section 432.5.

9 137. Based on information and belief, DEFENDANTS ordered unlawful financial credit
10 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
11 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
12 employment, in violation of California and Federal law, which results in a further violation of Labor
13 Code section 432.5.

14 138. Based on information and belief, DEFENDANTS also required Aggrieved
15 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
16 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
17 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
18 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
19 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
20 FCRA when conducting background screenings for applicants, including but not limited to
21 Aggrieved Employees that were subject to a background check as a condition of employment during
22 the application phase.

23 139. Based on information and belief, DEFENDANTS required Aggrieved Employees to
24 agree in writing to a background check which failed to abide by the requirements set forth in CA
25 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
26 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
27 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
28 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,

1 failing to provide a way by which the individual could request a copy of the report, failing to disclose
2 the name, address, and telephone number of the third party preparing the report, and failing to
3 properly obtain authorization or consent to such a background check, and thus was an unlawful
4 background check.

5 140. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
6 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
7 section 432.5.

8 141. Based on further information and belief, DEFENDANTS also required Aggrieved
9 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
10 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
11 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
12 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

13 142. Based on further information and belief, DEFENDANTS knew that requiring
14 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
15 condition of obtaining and/or holding employment was unlawful.

16 143. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
17 condition of employment, DEFENDANTS violated Labor Code section 432.5.

18 Unlawful Inquires into Criminal History

19 144. Labor Code section 432.7 prohibits an employer from asking applicants about past
20 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
21 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
22 convictions on its employment application, in violation of California law.

23 145. Upon information and belief, DEFENDANTS, in violation of California law,
24 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
25 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
26 employment and/or otherwise impermissibly inquired into criminal history on its employment
27 application in violation of California law, and in violation of Labor code section 432.5.

28 Unlawful PAGA Waiver

1 146. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring
2 Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited
3 to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

4 147. An action pursuant to PAGA “...is a representative action on behalf of the state”
5 *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements
6 purporting to waive an employee’s right to a trial of PAGA claims is contrary to California law and
7 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384
8 (“We conclude that where, as here, an employment agreement compels the waiver of representative
9 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.”)

10 148. Moreover, the California Supreme Court has ruled that a court cannot compel
11 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an
12 individual PAGA claim. *Kim v Reins Int’l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 (“There is
13 no individual component to a PAGA action because ‘every PAGA action ... is a representative
14 action on behalf of the state.’”)

15 149. Upon information and belief, DEFENDANTS required Aggrieved Employees to
16 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
17 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
18 required written agreement to an unlawful provision as a condition of employment which is a
19 violation of labor code section 432.5.

20 150. **Violation of Labor Code Section 432.6.** Based on information and belief,
21 DEFENDANTS require/required Aggrieved Employees to waive their right to first and/or second
22 meal periods as a condition of working for DEFENDANTS in violation of California law. As such,
23 DEFENDANTS violated including but not limited to, Labor Code section 432.6 by virtue of
24 including but not limited to, requiring Aggrieved Employees to sign invalid meal period waivers as
25 a condition of employment and/or for threatening, retaliating and/or discriminating against and/or
26 terminating Aggrieved Employees because of their refusal to waive their meal period rights.

27 151. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
28 engaged in these same herein described unlawful practices, which led to violations of the California

1 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
2 unlawful practices to all of its employees that it applied to PLAINTIFF.

3 **FIRST CAUSE OF ACTION**
4 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
5 **2698, *ET SEQ.***
6 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
7 **Defendants)**

8 152. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

9 **Failure to Keep Accurate Records**

10 153. California Labor Code § 1174 requires employers to keep “accurate and complete”
11 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
12 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
13 times during which all owed meal periods were provided each day.

14 154. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
15 and complete records as required by law, including but not limited to the following records: total
16 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
17 Aggrieved Employees began and ended each work period, time records of meal periods, and
18 accurate itemized wage statements.

19 155. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
20 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
21 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
22 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
23 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
24 period during which the referenced statutes and Wage Order provisions were violated.¹

25 **Meal Period Violations**

26 156. California law requires employers to provide employees a duty-free, uninterrupted

27 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
28 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil
penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”) (emphasis added).

1 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and
2 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
3 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
4 *Court* (2012) 53 Cal.4th 1004.

5 157. Employers must also provide employees with a second duty-free, uninterrupted thirty
6 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
7 be provided before the end of the 10th hour of work. *Ibid.*

8 158. Employers covered by any and all applicable IWC Wage Orders have an obligation
9 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
10 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
11 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
12 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
13 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
14 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
15 provided”).

16 159. Employers must pay employees an additional hour of wages at the employees’
17 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
18 meal period, first meal period provided after five (5) hours, second meal period provided after 10
19 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to
20 provide an employee a meal period in accordance with the applicable provision of this Order, the
21 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation
22 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

23 160. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
24 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
25 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
26 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
27 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
28 periods completely.

1 161. Based on information and belief, DEFENDANTS had and continue to have a policy
2 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
3 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
4 Aggrieved Employees did not receive compliant meal periods.

5 162. Moreover, based on information and belief, Aggrieved Employees did not receive a
6 timely, uninterrupted second meal period when working shifts over ten (10) hours in a workday.

7 163. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
8 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
9 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
10 violation of California's meal period laws.

11 164. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
12 periods in violation of California law and/or failed to pay the proper meal period premium for failure
13 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
14 differential pay and/or other non-discretionary compensation into the regular rate or compensation
15 for purposes of calculating the owed meal period premium.

16 165. These unlawful meal period policies and practices result in violations of Labor Code
17 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
18 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
19 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
20 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

21 **Rest Period Violations**

22 166. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
23 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
24 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
25 "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
26 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
27 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
28 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at

1 1029). The rest period requirement obligates employers to permit and authorize employees to take
2 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
3 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
4 257. If the employer fails to provide any required rest period, the employer must pay the employee
5 one hour of pay at the employee's regular rate of compensation for each workday the employer did
6 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
7 applicable IWC Wage Order, §12(B).

8 167. Moreover, under California law rest periods must be a "net" ten minutes in a suitable
9 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
10 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
11 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
12 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
13 which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what
14 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
15 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
16 "onus is on the employer to clearly communicate the authorization and permission [to take rest
17 periods] to its employees.").

18 168. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
19 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
20 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
21 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
22 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
23 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

24 169. Based on information and belief, DEFENDANTS implemented policies and/or
25 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
26 employer control during rest periods. Based on further information and belief, Aggrieved
27 Employees were pressured to complete their work duties according to a designated schedule such
28 that rest periods were only taken once tasks were completed, and/or as time permitted.

1 170. As a result, PLAINTIFF and Aggrieved Employees did not receive legally compliant
2 first, second, or third rest periods as required by California law.

3 171. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
4 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
5 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
6 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
7 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
8 the regular rate of compensation for purposes of determining the owed rest period premium.

9 172. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
10 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
11 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

12 **Failure to Provide Suitable Resting Facilities**

13 173. Per section 13 of all applicable IWC Wage Orders, employees shall be provided with
14 suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities
15 shall be provided in an area separate from the toilet rooms and shall be available to employees during
16 work hours.”

17 174. DEFENDANTS’ locations/facilities are generally similar in layout and design, and
18 there was, and continues to be, space that allows for a resting facility that employees may use to
19 cease work and recover during meal or rest periods. DEFENDANTS could have provided Aggrieved
20 Employees with a resting facility within DEFENDANTS’ facilities/locations with reasonable or no
21 modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a
22 breakroom). As a result, Aggrieved Employees were forced to adjust to areas not conducive to
23 resting, including but not limited to leaning up against the wall, or search for facilities outside of
24 DEFENDANTS’ premises which are not designated or reserved for their rest, such as their personal
25 vehicles.

26 175. DEFENDANTS did not provide Aggrieved Employees with suitable resting facilities
27 during their hours of work, particularly during meal and/or rest periods.

28 176. DEFENDANTS’ failure to provide suitable resting facilities to Aggrieved

1 Employees violated and continue to violate the applicable Wage Order, section 13(B) and the
2 California Labor Code, including but not limited to section 1198.

3
4 **Minimum and Overtime Wage Violations**

5 177. California law provides that employees in California must be paid for all hours
6 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
7 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
8 The minimum wage standard applies to each hour employees worked for which they were not paid.
9 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
10 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
11 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

12 178. California law also provides that employees in California must be paid overtime,
13 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per
14 week or 8 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3. Employers
15 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond
16 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh
17 consecutive day of work in a work week. *Ibid.*

18 179. As explained above, DEFENDANTS violated California's minimum and overtime
19 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
20 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
21 start and end times and meal period start and end times), payment according to scheduled hours
22 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during
23 meal periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful
24 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

25 180. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
26 Aggrieved Employees for all hours worked.

27 181. Based on information and belief, DEFENDANTS had actual or constructive
28 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for

1 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
2 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
3 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
4 Employees.

5 182. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
6 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
7 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
8 violation of California's overtime laws.

9 183. Based on information and belief, DEFENDANTS further violated California's
10 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
11 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
12 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
13 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
14 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
15 other Aggrieved Employees.

16 184. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
17 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
18 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
19 Wage Orders, section 20.

20 **Statutory Wage Violations**

21 185. California Labor Code section 223 makes it unlawful for an employer to secretly pay
22 wages lower than required by statute while purporting to pay legal wages. As described above,
23 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
24 earned minimum and overtime compensation for all hours worked which resulted in the payment of
25 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
26 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
27 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
28 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and

1 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
2 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
3 Labor Code § 2699(f)-(g).

4 **Refusal to Make Payment**

5 186. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
6 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
7 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
8 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
9 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
10 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
11 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
12 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

13 **Standard Conditions of Labor Violations**

14 187. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
15 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
16 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
17 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
18 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
19 minimum/overtime wages and other violations described herein result in separate violations of
20 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
21 1197.1 and 2699.

22 **Business Expense Violations**

23 188. California law requires employers to indemnify their employees for all necessary
24 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
25 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable

26 _____
27 ² Labor Code § 225.5 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee”) (emphasis added).

1 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
2 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
3 incurred by the employee enforcing the rights granted by this section.”

4 189. Among other things, under California law, when employees must use their personal
5 cellphones for work-related purposes, the employer must reimburse them for a reasonable
6 percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228
7 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
8 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
9 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
10 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
11 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

12 190. Further, “any contract or agreement, express or implied, made by any employee to
13 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
14 any employee or his personal representative of any right or remedy to which he is entitled to under
15 the laws of this State.” *See* Cal. Lab. Code section 2804.

16 191. As described above, PLAINTIFF and the Aggrieved Employees were improperly
17 required to pay for business expenses that are legally the responsibility of the employer.

18 192. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
19 full reimbursement for all reasonable expenses associated with carrying out their duties required
20 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
21 expenses in violation of Labor Code section 2802.

22 193. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
23 Employees have suffered injury in that they were not completely reimbursed as mandated by
24 California law.

25 194. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
26 full reimbursement for all reasonable expenses associated with carrying out their duties required
27 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
28 expenses in violation of Labor Code section 2802.

1 195. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved
2 Employees have suffered injury in that they were not completely reimbursed as mandated by
3 California law.

4 196. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
5 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
6 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
7 Code § 2802 and the applicable Wage Order.

8 **Wage Statement Violations**

9 197. California law requires every employer semi-monthly or at the time of each payment
10 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
11 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
12 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
13 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
14 is paid; (7) the name of the employee and only the last four digits of his or her social security number
15 or an employee identification number other than a social security number; (8) the name and address
16 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
17 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

18 198. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
19 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
20 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
21 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
22 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
23 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
24 effect during the pay period and the corresponding number of hours worked at each hourly rate by
25 the employee, in violation of Labor Code section 226(a)(9).

26 199. Moreover, due to violations detailed above, including but not limited to,
27 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
28 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,

1 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
2 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
3 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
4 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
5 compensation earned during the pay period into the regular rate of pay for purposes of calculating
6 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
7 overtime worked by PLAINTIFF and other Aggrieved Employees.

8 200. As explained above, wage statements issued by DEFENDANTS failed to list the
9 “total hours worked” by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
10 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
11 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
12 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
13 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
14 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

15 201. Based on information and belief, wage statements issued by DEFENDANTS failed
16 to list all applicable hourly rates in effect during the pay period and the corresponding number of
17 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
18 Code section 226(a)(9).

19 202. Separately, and independent from the above allegations, based on information and
20 belief, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees that
21 violate Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal
22 entity that is the employer.

23 203. Based on information and belief, wage statements issued by DEFENDANTS failed
24 to list the inclusive dates of the pay period for which the Class Member is being paid.

25 204. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
26 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
27 Employees over whether they received all wages owed to them.

28 205. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
42
PLAINTIFF’S REPRESENTATIVE COMPLAINT FOR VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT

1 they could not easily determine whether they received all wages owed to them and whether they
2 were paid for all hours worked.

3 206. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
4 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered
5 injury as they could not contact their employer regarding any question(s) they had about wages paid.

6 207. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
7 Aggrieved Employees with accurate, itemized wage statements.

8 208. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
9 Employees have suffered injury. The absence of accurate information on their wage statements has
10 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
11 mathematical computations to determine the amount of wages owed, and will cause difficulty and
12 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
13 submission of inaccurate information about wages and amounts deducted from wages to state and
14 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
15 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
16 and pay records than if DEFENDANT had complied with its legal obligations.

17 209. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
18 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
19 during which the statute provisions were violated. ³

20 **Unlawful Deductions**

21 210. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
22 an employee any part of wages theretofore paid by said employer to said employee." Based on
23 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees
24 paychecks during the relevant period. Such a practice is in violation of including but not limited to,
25 Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code
26 Section 2699.

27 211. Each violation results in a separate civil penalty, for each Aggrieved Employee, for

28 ³ Labor Code § 226.3 (establishing that the civil penalty is ~~4~~³ per employee per violation").

1 each pay period during which the statute provisions were violated. See Lab. Code §225.5
2 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
3 provided in this article, every person who unlawfully withholds wages due any employee in
4 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
5 to pay each employee”).

6 **Reporting Time Pay Violations**

7 212. Section 5 of all applicable IWC Wage Orders, provides as follows:

8 213. (A) Each workday an employee is required to report for work and does report, but is
9 not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the
10 employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two
11 (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less
12 than the minimum wage. (B) If an employee is required to report for work a second time in any one
13 workday and is furnished less than two (2) hours of work on the second reporting said employee
14 shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the
15 minimum wage.

16 214. Aggrieved Employees were not paid reporting time wages in accordance with
17 California law, including but not limited to the applicable IWC Wage Order. For example, based on
18 information and belief, at times, PLAINTIFF and/or other Aggrieved Employees reported to work
19 for a scheduled shift but were sent home and/or were not put to work and were not paid all owed
20 reporting time pay wages in accordance with California law.

21 215. Based on information and belief, DEFENDANTS have a policy and practice of
22 failing to pay all reporting time wages to Aggrieved Employees, in violation of California law,
23 including but not limited to, the applicable IWC Wage Order, Section 5. DEFENDANTS’ failure to
24 pay all reporting time wages to Aggrieved Employees violated and continues to violate the
25 applicable Wage Order, and the California Labor Code, including but not limited to section 1198.

26 **Seating Violations**

27 216. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be
28 provided with suitable seats when the nature of the work reasonably permits the use of seats and

1 when they are not actively engaged in the work duties that would not permit them to be seated.

2 217. All applicable IWC Wage Orders, Section 14(A-B) provides:

3 (A) All working employees shall be provided with suitable seats when the nature of the
4 work reasonably permits the use of seats.

5 (B) When employees are not engaged in the active duties of their employment and the
6 nature of the work requires standing, an adequate number of suitable seats shall be placed in
7 reasonable proximity to the work area and employees shall be permitted to use such seats when it
8 does not interfere with the performance of their duties.

9 218. Suitable seating is one of the worker protections covered by California's Wage
10 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
11 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
12 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

13 219. Based on information and belief, DEFENDANTS failed to provide Aggrieved
14 Employees with suitable seating, and when such employees were not engaged in duties which
15 required them to stand, no seating was placed in reasonable proximity to their workstations.

16 220. Moreover, based on information and belief, the nature of the work reasonably
17 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
18 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
19 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
20 of seats would not interfere with the performance of their duties.

21 221. The Aggrieved Employees worked in various positions. The nature of Aggrieved
22 Employees' work reasonably permitted the use of seats. However, DEFENDANTS failed to provide
23 suitable seating in reasonable proximity to Aggrieved Employees' work areas in violation of section
24 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting
25 DEFENDANTS to civil penalties under Labor Code sections 1199 and 2699. Each violation of each
26 Labor Code section and IWC Wage Order provision, for each Aggrieved Employee, results in a
27 separate civil penalty.

28 **Violation of Labor Code section 351 and 353**

1 222. Labor Code Section 351 prohibits employers and their agents from sharing in or
2 keeping any portion of a gratuity left for or given to one or more employees by a patron.
3 Furthermore, it is illegal for employers to make wage deductions from gratuities, or from using
4 gratuities as direct or indirect credits against an employee's wages. Labor Code Section 353
5 mandates employers to keep accurate records of all gratuities received.

6 223. Based on information and belief, DEFENDANTS failed to ensure that Aggrieved
7 Employees fully received the gratuities left for them by patrons, in that DEFENDANTS' and its
8 agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor
9 Code Section 351. Based on further information and belief, DEFENDANTS also failed to keep
10 accurate records of all tips received, in violation of Labor Code Section 353. Based on information
11 and belief, DEFENDANTS failed to pay gratuities paid by customers using credit cards to
12 Aggrieved Employees by the next regular payday following the credit card payment, in violation of
13 Labor Code section 351.

14 224. Based on information and belief, DEFENDANTS charges an additional service
15 charge to its customers/patrons. Customers are led to believe that the service charge will be paid to
16 DEFENDANTS' Aggrieved Employees. Instead, DEFENDANTS keep a majority (if not the
17 entirety) of the service charge, thereby depriving Aggrieved Employees of the service
18 charge/gratuity that is left by the patron/customer for the Aggrieved Employees. *See O'Grady v*
19 *Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can
20 constitute a gratuity that is intended to the employees providing the service).

21 225. Pursuant to PAGA, DEFENDANTS are liable for penalties of \$100 per pay period
22 payable to each Aggrieved Employee for the first violation of Labor Code Sections 351 and 353
23 they experienced within the statutory period, and \$200 per pay period for each additional violation.

24 **Sick Leave Violations**

25 226. DEFENDANTS violated California's paid sick leave laws including, Labor Code
26 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
27 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
28 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to

1 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
2 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
3 compensation into the sick leave pay rate calculation.

4 227. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
5 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
6 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
7 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
8 Aggrieved Employees’ intelligent exercise of their paid sick leave.

9 228. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
10 their paid sick leave at least prior to their respective separations, for as on several occasions
11 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
12 compensation.

13 229. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
14 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
15 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
16 were entitled to the maximum number of hours accruable.

17 230. Upon information and belief, DEFENDANTS failed and continue to fail to comply
18 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
19 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
20 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
21 wages.

22 231. These practices violated California’s sick leave laws, Labor Code section 245, *et seq.*

23 232. On information and belief, PLAINTIFF alleges that all of these practices were
24 experienced and continue to be experienced by other Aggrieved Employees.

25 233. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
26 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
27 seeks injunctive relief, attorney’s fees, declaratory relief, and penalties as permitted by law.

28 **Failure to Pay Vested Vacation/Paid Time Off**

1 234. California Labor Code section 227.3 provides that when an employer policy provides
2 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
3 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
4 employee's final rate in accordance with such contract of employment or employer policy respecting
5 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
6 off upon termination.

7 235. Based on information and belief, DEFENDANTS had and continue to have a
8 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
9 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
10 to Aggrieved Employees upon separation of employment, in violation of California law, including
11 but not limited to, Labor Code section 227.3.

12 **Untimely Payment of Final Wages**

13 236. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
14 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
15 payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an
16 employee not having a written contract for a definite period quits his or her employment, his or her
17 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
18 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
19 to his or her wages at the time of quitting."

20 237. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
21 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
22 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
23 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
24 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,
25 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

26 238. Based in information and belief, DEFENDANTS failed and continue to fail to timely
27 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
28 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF

1 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
2 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
3 sick leave and/or paid time off wages at the properly accrued rates.

4 239. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
5 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
6 256.

7 **Violation of Labor Code Section 208**

8 240. Labor Code Section 208 provides: Every employee who is discharged shall be paid
9 at the place of discharge, and every employee who quits shall be paid at the office or agency of the
10 employer in the county where the employee has been performing labor. All payments shall be made
11 in the manner provided by law.

12 241. Based on information and belief, DEFENDANTS have a policy and practice of
13 failing to provide Aggrieved Employees who are terminated with their final paychecks at the place
14 of discharge and/or of failing to provide Aggrieved Employees with their final paychecks at the
15 office or agency of DEFENDANTS in the county where the work was performed, in violation of
16 Labor Code Section 208.

17 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

18 242. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
19 require any employee or applicant for employment to agree, in writing, to any term or condition
20 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
21 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
22 conditions of employment, including but not limited to, unlawful non-solicitation/non-compete
23 agreements, unlawful confidentiality and/or nondisclosure agreements, substantively and/or
24 procedurally unconscionable choice of forum provisions, venue clauses, and/or other unlawful
25 agreements, unlawful releases and/or waivers, including but not limited to, unlawful meal period
26 waivers and/or unlawful criminal and/or financial checks as a condition of obtaining and/or
27 continuing employment in violation of Labor Code section 432.5.

28 243. Labor Code section 432.6(a), provides that “a person shall not, as a condition of

1 employment, continued employment, or the receipt of any employment-related benefit, require any
2 applicant for employment or any employee to waive any right..."Based on information and belief,
3 DEFENDANTS required Aggrieved Employees to sign meal period waivers that were universally
4 signed as a condition of employment, including but not limited to, during the onboarding process.
5 By requiring Aggrieved Employees to sign unlawful meal period waivers as a condition of obtaining
6 and/or maintaining employment, DEFENDANTS violated Labor Code section 432.5. Further, these
7 invalid waivers are otherwise unlawful under Labor Code section 432.6.

8 244. Moreover, the California Labor Code places certain procedural and substantive limits
9 on an employers' ability to conduct employee background checks and on how employers can use
10 the information they obtain through those background checks. Labor Code section 1024.5 states that
11 employers, except for financial institutions, may order a credit check only if the individual works
12 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
13 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
14 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
15 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
16 background check, including but not limited to identifying an appropriate reason for the background
17 check, a separate consent form with required disclosures and certain formatting requirements,
18 additional forms such as a summary of rights, a way by which to request a copy of the report, as
19 well as proper notice of adverse actions taken, among other statutory requirements.

20 245. Based on information and belief, DEFENDANTS ordered unlawful financial credit
21 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
22 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
23 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

24 246. Based on information and belief, DEFENDANTS required Aggrieved Employees to
25 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
26 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

27 247. Based on further information and belief, DEFENDANTS required Aggrieved
28 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct

1 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
2 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
3 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

4 248. Based on further information and belief, DEFENDANTS knew that requiring
5 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
6 condition of obtaining and/or holding employment was unlawful.

7 249. By requiring that Aggrieved Employees sign off on the illegal background and/or
8 financial checks, DEFENDANTS violated Labor Code section 432.5.

9 Unlawful Inquires into Criminal History

10 250. Labor Code section 432.7 prohibits an employer from asking applicants about past
11 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
12 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
13 convictions on its employment application, in violation of California law.

14 251. Upon information and belief, DEFENDANTS, in violation of California law,
15 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
16 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
17 employment and/or otherwise impermissibly inquired into criminal history on its employment
18 application in violation of California law.

19 252. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
20 Code section 432.7. By asking about convictions at the application phase or prior to extending an
21 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
22 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
23 disclose arrests and/or convictions as a condition of employment.

24 Unlawful PAGA Waiver

25 253. Additionally, DEFENDANTS violated Labor Code section 432.5 by requiring
26 Aggrieved Employees to agree in writing to other unlawful agreements, including but not limited
27 to, an unlawful waiver of PAGA and/or representative actions as a condition of employment.

28 254. An action pursuant to PAGA “...is a representative action on behalf of the state”

1 *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87. It is well settled that agreements
2 purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and
3 unenforceable. See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384
4 ("We conclude that where, as here, an employment agreement compels the waiver of representative
5 claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.")

6 255. Moreover, the California Supreme Court has ruled that a court cannot compel
7 arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an
8 individual PAGA claim. *Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 ("There is
9 no individual component to a PAGA action because 'every PAGA action ... is a representative
10 action on behalf of the state.'")

11 256. Upon information and belief, DEFENDANTS required Aggrieved Employees to
12 agree in writing to waive their right to a trial of PAGA claims in violation of California law. By
13 requiring Aggrieved Employees to agree, in writing, to an unlawful PAGA waiver, DEFENDANTS
14 required written agreement to an unlawful provision as a condition of employment which is a
15 violation of labor code section 432.5.

16 **Violation of Labor Code Section 432.6**

17 257. Based on information and belief, DEFENDANTS required Aggrieved Employees to
18 sign meal period waivers that were universally signed as a condition of employment, including but
19 not limited to, during the onboarding process. Further, these invalid waivers are otherwise unlawful
20 under Labor Code section 432.6.

21 258. Labor Code Section 432.6(a) provides: "[A] person shall not, as a condition of
22 employment, continued employment, or the receipt of any employment-related benefit, require any
23 applicant for employment or any employee to waive any right..."

24 259. Labor Code Section 432.6(b) provides in pertinent part:

25 260. "An employer shall not threaten, retaliate, or discriminate against, or terminate any
26 applicant for employment or any employee because of the refusal to the waiver of any right..."

27 261. Based on information and belief, DEFENDANTS require/required Aggrieved
28 Employees to waive their right to first and/or second meal periods as a condition of working for

1 DEFENDANTS in violation of California law. As such, DEFENDANTS violated including but not
2 limited to, Labor Code section 432.6 by virtue of including but not limited to, requiring Aggrieved
3 Employees to sign invalid meal period waivers as a condition of employment and/or for threatening,
4 retaliating and/or discriminating against and/or terminating Aggrieved Employees because of their
5 refusal to waive their meal period rights.

6 262. Under the provisions of PAGA and the above mentioned Labor Code sections,
7 including but not limited to Labor Code sections 201-203, 208, 210, 216, 221-223, 225.5, 226,
8 226.7, 227.3, 245-248.6, 256, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197,
9 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
10 interpretations of these laws by California Courts and administrative bodies, as well as any other
11 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 12 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
13 relevant California Labor Code provisions listed herein only if permitted by the
14 PAGA statute, pursuant to Labor Code section 2699(a); and
15 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
16 violations without a civil penalty recoverable under the PAGA, all in the default
17 amounts provided by Labor Code section 2699(f).
18 c. The proper measure of penalties under PAGA is the number of violations,
19 whether those violations were committed as against PLAINTIFF or any
20 Aggrieved Employee, whether a party to this action or not.

21 263. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
22 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of
3 PLAINTIFF, the State of California, and all Aggrieved Employees:

- 4 1. For civil penalties under Labor Code Section 2699 (75% payable to the
5 LWDA and 25% payable to Aggrieved Employees);
6 2. For an order temporarily, preliminarily and permanently enjoining and
7 restraining DEFENDANTS from engaging in similar unlawful conduct as set
8 forth herein;
9 3. For reasonable attorney's fees and costs of suit; and
10 4. For such other and further relief that the Court deems just and proper.

11
12 Dated: May 24, 2024

CROSNER LEGAL, PC

13
14 By: _____



15 Jamie K. Serb, Esq.
16 Brandon Brouillette, Esq.
17 Zachary M. Crosner, Esq.
18 Attorneys for Plaintiff
19 JEFFREY SCHULZ
20
21
22
23
24
25
26
27
28